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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09/883,893 | 06/18/2001 | Christopher B. Hewett | 0317 | 2534 |

21839 7590 06/02/2004

BURNS DOANE SWECKER & MATHIS L L P
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EXAMINER

BUTLER, MICHAEL E

| ART UNIT | PAPER NUMBER |
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DATE MAILED: 06/02/2004

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 22

Application Number: 09/883,893
Filing Date: June 18, 2001
Appellant(s): HEWETT

Alan E. Kopecki
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/2/2004.

Art Unit: 3653

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. The appellant's brief states there are no related appeals or interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is substantially correct. The rejection under 35 U.S.C. 103 evidenced by Harsanyi, Jr. et al. al. in view of Wilson '085 has been withdrawn as that reference had been included more on its strength to other claims having rejections that were not appealed.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the first paragraph of section (4) of the brief was correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

Art Unit: 3653

The appellant's statement of the issues in the brief are broadly correct as merely summarizing the claims' status. However, the statement of issues fails to detail any the factual and legal issues determinative on the disposition of the claims.

The issues are more precisely identified as:

- I Whether the supplemental feature of portability in a tissue dispenser would be a barrier precluding its use with Wilson '085 to one of ordinary skill in the art.
- II Whether Wilson '085 may be mounted close enough to a shower to provide tissues to a shower.
- III Whether a water resistant hood fixture protects tissues from water.
- IV Whether either a water resistant fixture protects cardboard from water or whether any of the disclosed materials comprised of plastic, wax paper, metal or cardboard in the tissue container housing are sufficiently resistant to spattered shower water to facilitate their use sufficient proximate a shower to facilitate their being provided to a shower.
- V Whether a tissue dispenser having a downward facing tissue orifice may be placed with a waste receptacle below within or below the protective hood of Wilson '085.

(7) Grouping of Claims

Appellant's brief includes a statement identifying the grouping of the claims.

Art Unit: 3653

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

| | | |
|-----------|--------|--------|
| 5,669,085 | Wilson | 9/1997 |
| 3,095,586 | Yates | 6/1963 |
| 3,095,586 | Cole | 5/1963 |

(10) *Grounds of Rejection*

Claim Rejections - 35 USC § 103

1. Claims 40-45 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yates in view of Wilson '085 in which Yates discloses a combination tissue dispenser and disposal station, each of the two stations similar in construction and upon placement of the proximately symmetric combination box in the inverted top-bottom position from that described featuring a:

(re: cl 40) tissue dispensing station having an orifice (c2 L 49-56; c3 L 50-57)

tissue disposal station having an orifice (29 fig; c2 L 9-16)

disposal and dispensing stations separated by a wall (19)

(Re: cl 41) tissue dispensing orifice in bottom and facing downward (c2 L 49-56 ; c3 L 50-57)

(Re: cl 42) disposing orifice facing upward (29 fig 2)

Art Unit: 3653

(Re: cl 43) tissue dispensing and disposing orifices in opposite directions (c2 L 49-56

; c3 L 50-57)

(re: cl 44) tissue disposal station overlies the tissue dispenser station, one above the other (Fig 3)

(Re: cl 45) disposal station overlies dispensing station (29 fig 2; c2 L 49-56 ; c3 L 50-57).

Wilson '085 discloses a hooded multifunction mountable water internal content protective bathroom fixture suitable for mounting the a hooded bathroom fixture at the stall (c2 L 35-6);

Wilson '085 expressly discloses mounting a hooded multifunction mountable bathroom fixture at the shower stall that provides water protection of its contents (c2 L 35-61).

(Re: cl 54) mounting the dispenser with the tissue disposal station at the shower with a fastener (c7 L 55-67).

It would have been obvious at the time of the invention for Yates to mount the tissue dispensing and disposal station within the tissue dispenser receiving fixture of Wilson and include a tissue dispenser with opposing upward oriented disposal orifice and downward facing dispensing orifices because Wilson protects the tissue from shower spatter, persons often have runny or congested noses needing clearing while in the shower or persons need tissues for localized cleaning while in the shower, so it would have been obvious for one to mount a combination

Art Unit: 3653

tissue dispenser and disposal on a shower wall as taught by Wilson. The arbitrary orientation of the disposal station and orifice relative the dispensing station is a matter of user preference with some users preferring to access the tissue through the lower dispensing aperture of Wilson and preferring the additional shower water protection available to the unused dispenser tissue via an upper positioned disposal station.

2. Claims 40, 44, and 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Wilson '085 in which Cole discloses a combination wall mountable tissue disposal station and tissue dispenser station featuring:

- (re: cl 40) tissue dispensing station having an orifice (13)
tissue disposal station having an orifice (above 15)
disposal and dispensing stations separated by a wall (lower wall of dispenser (11))
- (re: cl 44) tissue disposal station and tissue dispensing stations overlies are located one above the other (Fig 1; fig 2)
- (Re: cl 46) adhering the dispenser to a vertical wall by a fastener disposed on a rear portion of the dispenser (18/17)
- (Re: cl 47) suspending the dispenser with an elongate item (18/17).

Wilson '085 discloses a hooded multifunction mountable water internal content protective bathroom fixture suitable for mounting the a hooded bathroom fixture at the stall (c2 L 35-6);

Art Unit: 3653

Wilson '085 expressly discloses mounting a hooded multifunction mountable bathroom fixture at the shower stall that provides water protection of its contents and also protects items immediately below the fixture (c2 L 35-61).

It would have been obvious at the time of the invention for Cole to mount the tissue dispensing and disposal station within the tissue dispenser receiving fixture of Wilson and include a tissue dispenser with opposing upward oriented disposal orifice and downward facing dispensing orifices because Wilson protects the tissue from shower spatter, persons often have runny or congested noses needing clearing while in the shower or persons need tissues for localized cleaning while in the shower, so it would have been obvious for one to mount a combination tissue dispenser and disposal on a shower wall as taught by Wilson. The arbitrary orientation of the disposal station and orifice relative the dispensing station is a matter of user preference with some users preferring to access the tissue through the lower dispensing aperture of Wilson and preferring the additional shower water protection available to the unused dispenser tissue via an upper positioned disposal station.

Art Unit: 3653

Response to Arguments

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections.

Yates and Wilson '085

Wilson '085 is for a fixture for mounting in a bathroom with a hood for protecting contents from water spattered.

Wilson '085 expressly discloses a tissue dispenser proximately mountable at or in a shower in a bathroom. The hood protects the contents from spatter, the contents. Wilson '085 expressly describes its fixture as being mountable in a shower or bathtub stall. Wilson '085 discloses contents including tissue dispensers and portable accessories. Yates can be placed within the wall attached Wilson '085 fixture.

Yates identified cardboard in the preferred embodiment as applicant pointed out, but in contrast to applicant's cardboard only argument: Yates also identified a plurality of additional materials such as plastic, foil, was paper (c2 35-37). No matter what material is used, tissues are given protection by Wilson '085.

Cole and Wilson '085

Cole is mountable as a wall mounted fixture attached to a wall. It could easily be placed at the back wall within Wilson '085 or wall mounted underneath

Art Unit: 3653

Wilson '085 for purposed of availing Cole of the protection afforded by the hood of Wilson '085. Wilson '085 is a fixture for mounting in a bathroom with a hood for protecting contents from water spattered.

SUMMARY

I. Portability in a tissue dispenser would not be a barrier precluding its use with Wilson '085 to one of ordinary skill in the art.

The shelves of Wilson '085 are intended to accommodate placement of modular stand alone bathroom accessories and supplies. Portable dispensers such as Cole and Yates will have no difficulty with placement within Wilson '085.

II. Wilson '085 may be mounted close enough to a shower to provide tissues to a shower.

Wilson '085 discloses bathroom use, and even placement within a shower or bathtub stall.

III. A water resistant hood fixture protects tissues from water.

The hood of Wilson '085 was inteneded to protect contents from spattered water in a bathroom, so it provides protection from spattered water to the tissues.

Art Unit: 3653

IV. The disclosed materials comprised of plastic, wax paper, metal or cardboard in the tissue container housing are sufficiently resistant to spattered shower water to facilitate their use sufficient proximate a shower to facilitate providing tissues to a shower.

The hood of Wilson '085 protects the dispenser from spattered water. It is not apparent that in the cases of wax paper or plastic embodiments there is even a need for the case protection given by Wilson '085 and cardboard would need only minimal protection from spatter, but the protection provided the tissues by the Wilson '085 hood would supplementally protect the tissue dispensing casing.

V. A tissue dispenser having a downward facing tissue orifice as in Wilson '085 may be placed with a waste receptacle below.

Wilson '085 was designed to accept modular bathroom accessories, it discloses a bottom sited aperture for tissue dispensing, it would readily accept a downward modular tissue dispenser with downward facing dispensing orifice.

CONCLUSION

Wilson '085 teaches mounting a water protective bathroom fixture providing contents placed within protection from spattered water and mounting such a fixture

Art Unit: 3653

at a shower stall. Wilson '085 further teaches a lower tissue dispensing aperture so that protected tissues may be dispensed below. The Wilson '085 device discloses use with a tissue dispenser and readily accepts the placement of bathroom accessories inside.

Yates teaches a box with a combination tissue dispenser and disposal station on opposing sides of the box with opposing placed orifices. The box of Yates works in whichever orientation the user elects for the top/bottom/side of the tissue dispenser-disposal. The Yates combination dispenser-disposal can easily be placed within the shower sited Wilson '085 device protecting the tissues from water splattered. The rejections of claims 40-45 and 54 under 35 U.S.C. 103 evidenced by Yates in view of Wilson '085 ought be affirmed as the elements are disclosed and there is ample motivation to combine the references..

The Cole combination tissue dispenser and disposal station can readily be placed within or under a shower sited Wilson '085 providing the Cole tissues with protection from splattered water.

The rejections of claims 40, 44, and 46-47 evidenced by Cole in view of Wilson '085 ought be rejected under 35 U.S.C. 103(a) ought be affirmed as the elements are disclosed and there is ample motivation to combine the references.

Art Unit: 3653

Examiner certifies preceding word count at: 1945 Words.

Respectfully submitted,

Michael E. Butler

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5/27/04

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